UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8

CHILD CARE RESOURCES, INC. **Employer** **and** **OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES (OAPSE)/AFSCME LOCAL 4, AFL-CIO** **Petitioner**	**Case No. 8-RC-15907**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[1] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The Parties have filed briefs which have been carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[2]

> All full-time and regular part-time employees of the Employer in the Employer's Head Start program in the following classifications: assistant cook, assistant teacher, combo teacher, cook, custodian, family advocate, family day care mentor, home base visitor, resource teaching assistant, teacher, vehicle driver, day care mentor, but excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

There are approximately 50 employees in the unit found appropriate herein.

The Employer provides social services to young children and their families in Muskingum County through a variety of programs including Head Start and County Connections. The Head Start program has approximately 13 locations with its administrative office located at the Employer's office at 1580 Adams Lane, Zanesville, Ohio. The County Connection program serves children in the county school system and operates at nine locations, most of which are located in schools. The two programs share one common location. The administrative office for County Connection is located in the Muskingum Valley Educational Service Center in Zanesville, Ohio. The Employer's Executive Director, Jeri Johnson, is responsible for the operation of all the programs.

[2] At the hearing, the Petitioner amended its petition as follows: "All full-time and regular part-time employees of the Employer in the Employer's Head Start program in the following classifications: assistant cook, assistant teacher, combo teacher, cook, custodian, family advocate, family day care mentor, home base visitor, resource teaching assistant, teacher, vehicle driver, day care mentor but excluding all professional employees, guards and supervisors as defined in the Act and all other employees.

Among other classifications, the Petitioner seeks to represent teachers, assistant teachers and family advocates employed in the Head Start Program. County Connection also employs employees in the same three job classifications. The Employer takes the position that teachers, assistant teachers and family advocates in the County Connection program should be included in the unit as they share a community of interest with their counterparts in Head Start. There are about 22 employees in these job classifications in the County Connection program.

The Petitioner does not wish to include the three County Connection job classifications, contending that the employees in those job classifications do not share a sufficient community of interest to warrant their inclusion in the petitioned-for bargaining unit.[3]

Detailed record evidence presented at the hearing indicates that the job duties of the three concurrent job classifications, while not identical, are similar in many respects. Teachers in both programs are charged with the overall task of directing the daily educational program to the maximum benefit of each child. Assistant teachers in the two programs are responsible for a variety of tasks including preparing the classroom, assisting the teacher in completing lesson plans and conducting home visits. Family advocates in the Head Start and County Connection programs coordinate services provided to families, as well as recruit and enroll families. Family advocates also make home visits.

The skills and training required for the disputed job classifications are also similar. Jeri Johnson testified that Head Start and County Connection employees may receive training together. However, she did not testify to any specifics such as when such training last occurred, the frequency of common training or which of the three job classifications were involved in any joint training. Sarah Fisher, a Head Start family advocate, testified that she had first aid training

this year in a meeting room at a County Connection location. Although it is not entirely clear from the record, it appears that County Connection employees were also present at this training session.

The record reveals that the employees in dispute are covered by common life, health and retirement benefit plans. The same wage schedule applies to both groups of employees. All employees receive an annual wage increase in August. Personnel files for all employees are maintained at the Employer's facility on Adams Lane. Payroll records and the benefit plans are maintained and administered at the Adams Lane location. The hours worked by the job classifications at issue do not differ to a significant degree. Employees in both programs start the work day between 7:30 a.m. and 8:00 a.m. The full day Head Start program operates until 4:30 p.m.[4] The County Connection program ends at the same time that the county school day is over, approximately 3:30 p.m. to 4:00 p.m.

Director Johnson testified that job openings for the Head Start and County Connection programs are posted at both administrative offices as well as at the individual job sites. The record reveals that since 1994, three employees have been permanently transferred from one program to another. Family advocate Patsy Hammer transferred from Head Start to County Connections. Trisha Kolsky transferred from County Connection to Head Start. The record reveals that Kolsky was promoted to the position of assistant program coordinator at the time of the transfer. The record does not disclose what position she held with County Connection. The most recent transfer occurred in February 1999. Heather Williams transferred from a teaching position with Head Start to a similar position at County Connection.

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[3] The Parties stipulated at the hearing that none of the employees either sought by the Petitioner or those in dispute are professional employees within the meaning of Section 2(12) of the Act.

It is undisputed that there is no common supervision at the first level between the two programs. Head Start employees report to site based managers. County Connection employees are supervised by Polly Perry, Program Coordinator. Johnson is involved with issues such as the hiring and termination of all employees.

Johnson testified that she and Perry share substitute lists with each other in those instances where they must fill in for an employee who is not available to work on short notice. There was no testimony as to how often any particular substitute is used by both programs.

Kenneth Argo is a vehicle driver for Head Start at the one site that both programs occupy, referred to as the military site on Dresden Road. He testified that during his one year of employment at that site, he does not know of any instance where Head Start and County Connection employees substituted for each other. Head Start employee Sara Fisher testified that she has worked at three different sites over a period of approximately six years. Fisher never observed a County Connection employee substitute for a Head Start employee at any of the sites where she has been employed.

While the record establishes the three permanent transfers between the two programs referred to above, there is scant record evidence to indicate that there is any temporary interchange of employees between the programs. In this connection, Johnson testified that Head Start kitchen staff employees assist in picking up food trays and dishes for the County Connection program. There is no evidence, however, as to which locations this occurs at and to what degree any interaction takes place between the Head Start kitchen staff and County Connection employees.

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[4] The Head Start program also offers half-day sessions, combo sessions and home based sessions.

The record discloses very little, if any, functional integration between the Head Start and County Connection employees. Given the nature of the two programs and the different work locations, there would seem to be very little opportunity for any functional integration to occur between teachers, assistant teachers, and family advocates of the County Connection program and employees of Head Start in the proposed unit. The programs have separate federal funding and there can be no intermingling of funds. The record reveals that the employees in dispute do not attend joint staff meetings. Each site conducts a weekly staff meeting.

In determining whether job classifications of employees share a sufficient community of interest to include them in a single unit, the Board's decision in Kalamazoo Paper Box Corp., 136 NLRB 134 (1962) sets forth the following relevant factors for consideration: common supervision; the degree of functional integration, the interchangeability and contact among various employee classifications, the nature of employee skills and functions, location of the work situs and similarities in general working conditions and fringe benefits.

In the present case the record establishes that employees in the three job classifications in dispute have similar job duties. The skills required to perform the tasks are nearly the same. There are also similarities in general working conditions such as hours of work. The two groups receive periodic wage increases at the same time, are subject to the same wage schedule and receive common benefits.

Despite the above similarities, I note that there is very little interchange between the employees in question, no common daily supervision and virtually no contact between the two groups as they work at different locations. I do not find the three permanent transfers in a five-year period of time weighs in favor of the inclusion of the County Connection employees.

Moreover, permanent transfers are generally less significant indicators of interchange than temporary transfers. Red Lobster, 300 NLRB 908, 911 (1990).

Regarding the one common facility on Dresden Road, Johnson testified that she had no knowledge of any interaction that may occur between Head Start and County Connection employees. There is no meaningful evidence that the two programs share resources or supplies. Johnson testified that the programs could share resources as long as the borrower replaced the item. She gave no other specific evidence to indicate that this has actually occurred and with what degree of frequency.

Upon consideration of the foregoing, I conclude that the unit sought by the Petitioner is an appropriate unit for collective bargaining. I cannot agree with the Employer's contention that the only appropriate unit herein must include the teachers, assistant teachers and family advocates in the County Connection program. In this regard I note the lack of interchange, the lack of common supervision and the absence of functional integration between the Head Start and County Connection employees.

In finding the petitioned-for unit appropriate I rely on the Board's decision in Overnite Transportation Co., 322 NLRB 347 (1996). In that case the union sought to represent a unit of drivers and dock workers. The employer took the position that mechanics should also be included in the unit. The Regional Director found that the mechanics were required to be in the unit as they performed some similar job duties, at times used common equipment, worked with other employees in a relatively small location, received common benefits, were subject to the same work rules and received the same periodic wage increases.

The Board reversed the Regional Director noting that there was no regular interchange among employees in the petitioned-for unit and the mechanics. As in the present case there was

no common daily supervision and no functional integration of work operations. The Board held that the mechanics did not share a close community of interest as to *require* their inclusion in the unit. Id. at 347.

In the above case, the employer subsequently filed a motion for reconsideration in Overnite Transportation Co., 322 NLRB 723 (1996). In denying the motion for reconsideration, the Board reiterated the basic principles underlying the concept of community of interest and what constitutes an appropriate unit. In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. The Board does not compel a petitioner to seek any particular appropriate unit. Id. at 723. Moreover, the Act does not require that a petitioner seek to represent the most comprehensive unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950). Applying those principles here, I find, for the reasons expressed above that the unit sought by the Petitioner is an appropriate unit.

I find Purity Supreme, Inc., 197 NLRB 915 (1972), relied on by the Employer to support its position, to be clearly distinguishable. In that case the union sought to represent a unit of all employees at one of the employer's supermarkets that was part of a chain. The employer contended a single unit was not appropriate. The Board agreed and dismissed the petition. In so doing the Board noted the extraordinary degree of integration and centralization of operations and labor relations of all the stores in the chain. The Board noted that in a two-year period of time there were approximately 2,800 temporary transfers of employees among various stores.

In the instant case, I am cognizant of the fact that some aspects of the Employer's operations, including the administration of payroll and benefits are centralized at the Adams Lane location. However, I find the employer's ability in Purity Supreme, Inc. to overcome the well-established presumption of the appropriateness of a single store unit is not particularly

persuasive in determining the issue before me in this matter. Moreover, there is no comparison between the number of permanent transfers in the instant case and the number of temporary transfers in Purity Supreme, Inc.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the ***full*** names and addresses of all

the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **November 9, 1999**.

Dated at Cleveland, Ohio this 26th day of October 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

420-2936